IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.3

Criminal Appeal No. 1224 of 2001
(Old No. 1528/1990)

1. Girman So Pratap Singh.
2. Dasondhi S/o Phimmi
   Both residents of Ramgarh Seeshambara,
   P.S.Kotwali, District Dehradun …….Appellants.

Vs.

State of U.P. …….. Respondent.

**Hon'ble Irshad Hussain, J.**

None appeared for the appellants.

Heard Sri Lalit Sharma for the State and perused the record of the appeal.

The sureties of accused Chander Bhan of session trial No. 131/1988 under section 8/20 of the N.D.P.S. Act 1985, P.S. Rishikesh have preferred this appeal against the order dated 6-7-1990 passed by I Additional Session Judge, Dehradun whereby the surety bonds were forfeited, the application of the surety-appellants for remission of the amount of surety bonds was rejected and realization warrant was directed to be issued against these appellants. From perusal of the impugned order it is evident that the learned Sessions Judge has not taken into consideration the fact that these sureties have moved an application on 7.3.1989, Annexure-1, to the supplementary affidavit praying that their surety bonds be cancelled as the accused for whom they stood surety is detained in Dehradun jail in another case since 28th February 1989. It is also evident from the order sheet, Annexure-2 that the accused of the sessions trial was thereafter summoned from the jail on various dates. This indicate that the claim made by the sureties was correct and the accused of the sessions trial was in jail in some other case when they submitted the application for cancellation of their bail bonds and relieving them of their liability as sureties of the accused. It appear that the accused was released on bail in another case also and thereafter he absconded.

Considering the peculiar circumstances of the case the learned Sessions Judge was legally obliged to consider the above facts that the sureties have submitted an application seeking cancellation of their surety bonds and discharging them from being the sureties of the accused and further that the

accused absconded thereafter after the was released on bail in other case also. These were the facts of the case which have no been considered and have resulted in not bringing justice to the cse and therefore the impugned order dated 6-7-1990 can not be legally maintained.

For the above reasons this appeal succeed and is to be allowed. The appeal is allowed. The order dated 6-7-1990 is set aside. The learned I Additional Sessions Judge Dehradun hsall decide the case afresh considering the above factors and after giving an opportunity of hearing to the appellant-sureties.

**(Irshad Hussain, J.)**

Dated: 18-10-2003

ISB